

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CASEY TAYLOR, et al.,

Plaintiff,

v.

BURLINGTON NORTHERN  
RAILROAD HOLDINGS, INC., et al.,

Defendants.

CASE NO. C11-1289JLR

ORDER

This matter comes before the court on Defendant BNSF Railway Company's ("BNSF")<sup>1</sup> motion for summary judgment. (Mot. (Dkt. # 29).) The court previously granted the motion in part and deferred ruling in part. (*See* 2/17/16 Order (Dkt. # 53).)

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<sup>1</sup> Plaintiffs originally named both BNSF Railway Company and Burlington Northern Railroad Holdings, Inc., as defendants in this matter; however, in their agreed pretrial order the parties informed the court that "the caption of this case should be amended to reflect that the plaintiffs' claims are against defendant BNSF Railway Company only." (Prop. PTO (Dkt. # 59) at 2.) Accordingly, the court DISMISSES all claims against Burlington Northern Railroad Holdings, Inc., with prejudice.

1 Specifically, the court granted summary judgment in BNSF's favor on Plaintiffs Casey  
2 and Angelina Taylor's ("the Taylors") claims that BNSF discriminated against Mr.  
3 Taylor on the basis of (1) BNSF's perception that Mr. Taylor was disabled due to obesity  
4 and (2) Mr. Taylor's status as an honorably discharged veteran. (*See id.* at 11-23.) The  
5 court reserved ruling on the Taylors' final claim—that BNSF discriminated against Mr.  
6 Taylor on the basis of a perception that Mr. Taylor was disabled due to problems with his  
7 knees and back.<sup>2</sup> (*See id.* at 20-21, 23.) At the pretrial conference, the court heard oral  
8 argument on that issue. (*See* Dkt. # 62.) Now, having considered all briefing and  
9 materials filed in support of and opposition to BNSF's motion, the balance of the record,  
10 the relevant law, and oral argument, the court GRANTS BNSF's motion for summary  
11 judgment on the Taylors' knee- and back-related disability discrimination claim and  
12 DISMISSES this case with prejudice.

13 The question before the court is whether the Taylors have met their summary  
14 judgment burden to point to evidence from which a jury could conclude that BNSF  
15 perceived Mr. Taylor as disabled due to problems with his knees and back. (*See id.*;  
16 2/17/16 Order at 20-21.) The court concludes that the evidence presented, viewed in the  
17 light most favorable to the Taylors, does not support the conclusion that BNSF perceived  
18 Mr. Taylor as disabled due to knee and back problems. The evidence shows that BNSF  
19 knew about Mr. Taylor's past knee and back problems and was uncertain of the current

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21 <sup>2</sup> The Taylors bring all their claims under the Washington Law Against Discrimination  
22 ("WLAD"), RCW ch. 49.60. (*See* Prop. PTO at 1; 2/17/16 Order at 7; Taylor MILs (Dkt. # 38)  
at 1-2.)

1 status of his knees and back. (*See* 2/17/16 Order at 4, 20; Dkt. # 62.) However, the  
2 evidence fails to show that BNSF perceived Mr. Taylor as having presently existing knee  
3 and back problems. Indeed, BNSF knew only that Mr. Taylor reported having no current  
4 problems with his knees and back and passed the physical tests during his medical  
5 examination. (*See* 2/17/16 Order at 4, 20; Dkt. # 62.) Moreover, at the pretrial  
6 conference, the Taylors' counsel implicitly acknowledged that BNSF did not perceive  
7 any presently existing problems when he stated that Dr. Jarrard, BNSF's medical officer,  
8 knew that Mr. Taylor had no problems with his knees and back except what was in his  
9 medical history. (*See* Dkt. # 62.)

10       The WLAD defines disability as "the presence of a . . . physical impairment that:  
11 (i) Is medically cognizable or diagnosable; or (ii) Exists as a record or history; or (iii) Is  
12 perceived to exist whether or not it exists in fact." RCW 49.60.040(7)(a). As their  
13 counsel confirmed at the pretrial conference, the Taylors bring only a perceived disability  
14 claim, not an actual or a "record or history of" disability claim. (*See* Dkt. # 62); RCW  
15 49.60.040(7)(a)(iii). Therefore, it is insufficient for the Taylors to show that BNSF knew  
16 about Mr. Taylor's past knee and back problems and discriminated against him on the  
17 basis of that history. Instead, the Taylors must provide evidence from which a jury could  
18 conclude that BNSF perceived Mr. Taylor as being presently disabled due to his knees

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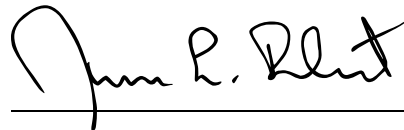
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1 and back. Because the Taylors have failed to meet this burden, the court GRANTS  
2 summary judgment in BNSF's favor on the Taylors' knee- and back-related disability  
3 discrimination claims and DISMISSES this case with prejudice.

4 Dated this 7th day of March, 2016.

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7 JAMES L. ROBART  
8 United States District Judge  
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